IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2734 OF 2005

Smt.Varsha Shyam Amlani,
Age-44, an Indian Inhabitant,
residing at 18, 1st floor,
Mehta Mansion, S.V.Road,
Mahim (West),
Mumbai - 400 016. ..Petitioner
(Wife of Detenu)

VERSUS

1. The State of Maharashtra,
through the Secretary to
the Government of Maharashtra,
Home Department (Special),
Mantralaya, Mumbai - 32.

2. Smt.Neela Satyanarayana,
The Principal Secretary
(Appeals & Security),
Government of Maharashtra,
Home Department (Special),
Mantralaya, Mumbai - 32.

3. The Superintendent of Prison,
The Mumbai Central Prison,
Arthor Road, Mumbai.

4. The Superintendent of Prison,
The Nashik Road Central Prison,
Nashik Road,
Maharashtra. ..Respondents

Mr.Maqsood Khan for the Petitioner.
Mr.D.S.Mhaispurkar, A.P.P. for the Respondent-State.

CORAM :- B.H.MARLAPALLE &
NARESH H.PATIL,JJ.
DATE : 3rd OCTOBER, 2006

ORAL JUDGMENT (PER : B.H.MARLAPALLE,J.)

1. This Petition filed under Article 226 read with Article 21 and 22 of the Constitution of India impugns the order of detention passed on 15th October, 2005 by the State Government under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (the Act for short).

The detenu Mr.Shyam Dharmadas Amlani is the husband of the present Petitioner and detention order taken effect from 15th December, 2005 itself. The detention order has been challenged mainly on the following three grounds :-

a. The statements of the detenu were recorded on 17th December, 2004 and 20th December, 2004, he was taken in custody on the same day and was remanded on 21st December, 2004. He was released on bail on 1st January, 2005. He was issued with show cause notice under the Customs Act on 30th May, 2005 and the detention order was passed on 15th October, 2005 and therefore, it suffers from delays, which are not explained.

b. The live link between the alleged illegal acts and the detention order was snapped on account of these delays.

c. The delay caused in passing the impugned order of detention couldnot be explained by the Authorities concerned and therefore, the impugned order is vitiated on that count.

d. Similarly, the delay in respect of the representation submitted by the detenu and rejected by the Competent Authority, has rendered the order illegal.

2. In support of the challenge to the impugned order, Mr.Maqsood Khan, the learned Counsel for the Petitioner has relied on the following decisions of the Hon'ble Supreme Court.

(a) **V.C.Mohan Vs. Union of India, 2002 SCC (Cri) 648,**

(b) **Pradeep Nilkanth Paturkar Vs. S.Ramamurthi, AIR 1994 SC 656**,

(c) **Abdul Rehman Vs. State of Kerla and**

Others, AIR 1990 SC 225,

(d) **Smt.Khatoon Begum Vs. Union of India and Others, AIR 1981 SC 1077,**

(e) **Union of India and Another Vs. Sneha Khemka and Another, (2004)2 SCC 570.**

. In addition, he has also relied on the decisions of this Court, some of which are reported and others are not. The main thrust of the arguments is on the point of delay caused in passing the detention order with reference to the date of occurrence i.e.16th December, 2004 and 17th December, 2004.

3. Mr.Mhaispurkar, the learned A.P.P. on the other hand has supported the impugned order of detention and submitted that the delay if any, has been duly explained and mere delay in passing the impugned order is not fatal. By referring to the affidavits filed in reply by the Authorities concerned, he submitted that the challenge to the impugned order is devoid of merits and the Petition is required to be dismissed. In support of his arguments, he placed reliance on the following decisions of the Hon'ble Supreme Court.

(a) **Sitthi Zuraina Begum Vs. Union of India and Others, 2002 AIR SCW 4807**,

(b) **Union of India Vs. Chaya Ghoshal (Smt) and another, (2006) 1 SCC (Cri) 257,**

(c) **D.Anuradha Vs. Joint Secretary and another (2006) 2 SCC (Cri) 432**.

. In addition he also relied on the following judgments of this Court (Division Bench).

(a) **Shabbir Ahmed Rafique Ahmed Vs. State of Maharashtra & Ors. 2006 All MR (Cri)946,**

(b) **Shaikh Mohd. Saeed Kamamtullah Vs. State of Maharashtra & Ors. 2004 All MR (Cri) 654,**

(c) **Mohandas Dhandumal Khemani Vs. State of Maharashtra & Ors. 2003 All MR (Cri) 833**

(d) **Shri.Usman Gani Yakubali Vs. State of Maharashtra & Ors. 2002 All MR (Cri) 2148**.

4. Let us therefore consider the explanation provided by the Detaining Authority i.e. the Principal Secretary (Appeals and Security) Home Department (Special), Government of Maharashtra. As per the said affidavit we can reproduce the following sequence of events.

5. On 11th December,2004 information was received about the export goods having been misdeclared and therefore, the consignment was seized. On 16th December, 2004 and 17th December, 2004, the said goods were examined and panchanama was drawn so as to suggest that the goods sought to be exported were not the same in quantity as shown in the declaration. The statement of detenu was recorded under section 108 of the Customs Act, 1962 on 17th December, 2004 as well as 20th December, 2004 on which date he was arrested. As noted earlier he was released on bail on 1st January, 2005. Between 4th January, 2005 to 21st March, 2005 investigation was undertaken and statements of various persons were recorded. Based on these statements and the preliminary investigation report, the Sponsoring Authority decided to forward the proposal of Screening Committee for the detention of the detenu under the Act. The Screening Committee approved the proposal on 5th April, 2005 and it was forwarded to the Detention Authority on 15th April, 2005. The detention order dated 15th October, 2005, thus came to be passed almost after six months. We are therefore, required to examine whether this delay has been explained and if so, whether it has been properly explained.

6. The Detaining Authority in her affidavit-in-reply has stated that after receiving the proposal on 15th April, 2005, the concerned Assistant prepared the detailed note and forwarded the papers to the Under Secretary on 29th April, 2005 and after its scrutiny, the concerned Assistant prepared a detailed note and forwarded to the Deputy Secretary. On the same day the Deputy Secretary gave his endorsement and placed before the Detaining Authority, who in turn endorsed the same and called for necessary documents from the Sponsoring Authority on 30th April, 2005. In the meanwhile, the detenu had submitted a representation dated 30th April, 2005 and the same was also sent to the Sponsoring Authority for calling their parawise comments. On 11th May, 2005 the Sponsoring Authority sent further generated documents and they were received by the Detaining Authority on 13th May, 2005. She put her endorsement on 16th May, 2005, since the documents as requisitioned from the Sponsoring Authority on the representation were not received. Then parawise remarks were forwarded by their letter dated 16th May, 2005 which was received by Detaining Authority on 18th May, 2005. The representation was processed by the concerned Assistant on 20th May, 2005 and forwarded to the Deputy Secretary, who in turn gave his endorsement on 21st May, 2005. On 21st May, 2005 she gave endorsement and directed to submit a proposal for further orders. The concerned Assistant submitted the proposal along with further generated documents on

31st May, 2005 to the Under Secretary, who forwarded the papers to the Deputy Secretary and who gave his endorsement on 3rd June, 2005 and forwarded to the Detaining Authority. After carefully going through the papers, the Detaining Authority deem it proper to have a meeting with the Enquiry Officer and such a meeting was held on 9th June,2005. As the Detaining Authority was not satisfied about certain clarification, Sponsoring Authority again called to give clarifications in writing and further documents and remarks vide letter dated 15th June, 2005. These parawise remarks on the representation made by the co-detenu were received by the Detaining Authority on 5th July, 2005. The concerned Assistant again prepared the detailed note and forwarded to the Deputy Secretary on 16th July, 2005, who gave his endorsement and forwarded the same to the Detaining Authority on 18th July, 2005. The draft order of detention was submitted on 23rd August, 2005. The delay caused from 23rd August,2005 has been attacked by the learned Counsel for the Petitioner and as per him, the following three blocks of delay have not been explained properly.

a) 23rd August, 2005 to 1st September, 2005.
b) 1st September, 2005 to 5th October, 2005
c) 5th October, 2005 to 15th October, 2005.

7. As far as the first block is concerned, the Detaining Authority has clarified that the documents were required to be typed so as to serve along with the detention order and these voluminous documents took about a week's time to get them ready. Thereafter the Officers of the Sponsoring Authority

were called for discussion on 1st September, 2005. On 22nd September, 2005, the representation submitted by the Petitioner was decided and it was rejected. As per the Detaining Authority the voluminous documents running into about 503 pages and the grounds of detention as drafted running into about 58 pages (87 paragraphs) took considerable time to go through the required material and also for better clarification and therefore, the final draft of the detention order could be prepared only on 5th October, 2005.

8. We have also noted that the representation submitted by the Petitioner before the detention order was passed has also taken considerable time of the Detaining Authority as well as the Sponsoring Authority. Affidavit-in-reply on behalf of the Sponsoring Authority has been filed by the Deputy Director, DRI, Mumbai. Thus the delay mainly between the two blocks i.e. 1st September, 2005 to 5th October, 2005 and 5th September, 2005 to 15th October, 2005 has to be considered in the instant case and it cannot be accepted that the said delay has not been properly explained and therefore, it would vitiate the impugned order of detention.

9. Let us therefore, consider the nature of the offence alleged. M/s.CMA Overseas were exporting the consignments with the total declared FOB value of Rs.25,00,930/- with a declared weight of 80 MT in four containers (each container of 20 MT). The material

being exported was betel powder and against the said export M/s.CMA Overseas was entitled to import 84 MT of betel nut. However, on rechecking the containers, it was found that against the declared weight of each bags of 40 kgs., the net weight was between 30 kgs. to 31 kgs. Four containers were weighed between 9.45 a.m. to 10.15 a.m. on 16th December, 2004 in presence of Mr.Santosh Waskar and it was found that the containers contained 345 bags (HDPE) as against the declared quantity of 500 bags. At the same time, the price of the material being exported was between Re.1.00 to 1.25 per kg. whereas, the price of the material that was sought to be imported in exchange was varying from Rs.10/- to 12/- per kg. in the domestic market. Even the betel nut powder that was claimed to be exported was not the betel nut powder as such and it was mixed/diluted which would be dumped as rubbish. On 17th January, 2004 when the detenu's statement was recorded under section 108 under the Customs Act, 1962, he had stated that he was a Contractor by profession for various import and export items like Dry Fruits, Spices and Cosmetics etc. and he was operating from his residence to carry out this profession. He disclosed that he had came in contact with one Mr.Piyush of M/s.Simply Spices and who had planned to import duty free Split Betel Nut (Supari) against DFRC Licences to be purchased by him from various exporters of Supari Powder and these exporters were M/s.Chamunda, M/s.Shurveer and M/s.N.S. Corporation. He disclosed the links he established

subsequently with the help of Mr.Piyush and arranged for taking delivery and subsequent dumping at Dubai of around 21 containers of Supari Powder. These statements indicated that the so called export was only for being dumped in a foreign destination but for the Indian Authorities, it was an export consignment of Betel Nut Powder against which there was a benefit of Betel Nut being imported. It was also found in the investigation that the powder sought to be exported was brought from various centres in Northern India through the Agents and at low prices and there was an established link of the operators for transportation, consignment and export. This operation was duly set-up few years back and the detenu was found to be the person acting as a inter mediator, who was able to establish links between the exporters and importers for the powder for its being dumped in the foreign destinations and in turn, benefit the exporters by importing the Betel Nuts. No wonder, the investigation had taken a long time and the Detaining Authority was therefore required to decide on the basis of the material available and placed before her so that the detention order that was passed would be sustainable in law, more particularly on the grounds for detention.

10. The nature of the offence under the Act and the justification for detention has been dealt by the Larger Bench (Nine Judge Bench) in the case of

Attorney General for India Vs. Amratlal Prajivandas and Others, **AIR 1994 SC 2179** in the following words :-

> ....."If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ratifications. These acts are preceded by a good amount of planning and organisation. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention."

11. More recently in the case of Union of India and Others Vs. Chaya (Supra) the same view has been reiterated. A single act can be a basis of detention and the number of acts for such detention is not very material. On the point of delay in the case of Union of India & Others Vs. Chaya Ghosal (Supra) it has been stated that the facts of each case will have to be examined to consider the point of delay and there cannot be a straight jacket. The same view has been reiterated in the case of D.Anuradha (Supra). All these cases were pertaining to the detention orders passed under section 3(1) of the COFEPOSA Act. The learned Counsel's reliance on the judgment in the case of V.C.Mohan (Supra) is, in our considered opinion misplaced.

12. In the case of **Ashok Narain Vs. Union of India, AIR 1982 SC 1222** it has been held that the delay in issuig the order of detention was caused not due to any laxity on the part of the Agency concerned, but the result of full and detail consideration of the facts and circumstances of the case by the various differences in word. In the case of **Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, AIR 1988 S.C.1255**, it has been clarified that a distiction has tobe drawn between the delay in making the order of detention under the law relating to the Preventive Detention and the delay caused in complying with the procedural safeguards under Article 229 of the Constitution. In the case of **Hasan Khan Ibne Haider Khan Vs. R.H.Mendnoca and Others, AIR 2000 SC 1146** the Apex Court stated interalia, "it cannot be said that there was undue delay and action was being taken in the routine manner, as after completion of the enquiry, the matter had tobe examined at various levels and finally the orders were passed by the Commissioner.

13. Having regards to the above settled position in law and the grounds of detention set out in the detention order as well as the affidavit in reply filed by the Detention Authority, we have no dobut that there was sufficient material before the Detaining Authority to pass the impunged order. The charges on the basis of which the order has been passed cannot be called as stale and it cannot be expected that the live link between the propensity and potentiality export consignment and the detention order was snapped. The

time taken between 1st September, 2005 to 5th October, 2005 as well as 6th October,2005 to 15th October,2005 cannot in no way vitiate the impugned order of detention, in the facts and circumstances of the case.

14. Coming to the issue of the representation submitted by the detenu or submitted on his behalf, we have the affidavit of the State of Government, which is affirmed by the Under Secretary, Home Department (Special), Government of Maharashtra. The representation of the detenu was dated 29th October,2005 and was jointly addressed to the Detaining Authority, State Government, Central Government and Advisory Board. It was received by the Authority on the same day i.e. 29th October, 2005. Parawise comments were called from the Sponsoring Authority on 31st October, 2005 and it was received by the Home Department on 16th November,2005. The Detaining Authority rejected the representation dated 5th December,2005 and it was received by the detenu on 10th December,2005. Coming to the delay between 17th November, 2005 to 5th December, 2005, the same has been explained by the Detaining Authority, we are satisfied by the said explanation.

15. As far as the representation to the State Government is concerned, it was received by the State Government on 29th October,2005 and parawise comments were called from the Sponsoring Authority on 31st October,2005 which were received on 6th November,2005. The file was submitted to the Detaining Authority, which

rejected the representation on 5th December,2005. The concerned Assistant prepared a detailed note on 6th December,2005 and forwarded to the Under Secretary, who made his endorsement on the same day and submitted to the Deputy Secretary on 7th December,2005. The file was placed before the Additional Chief Secretary on 7th December,2005 itself and the representation was rejected. The reply was communicated to the detenu vide Government Letter dated 8th December,2005, which was received by him on 12th December,2005 in the Nashik Road Central Prison. Thus the representation has been decided without any unexplained delay.

16. There is an additional ground, which was sought to be argued before us i.e.the medical certificate, which was issued in favour of the detenu while he was taken in custody on 20th December, 2004. It was claimed that while in custody, certain statements were extracted from him and reduced into writing and the detenu alleged that these statements were extracted under threats of violence/intimidation. He had sought to withdraw such statements on the basis of the said medical certificate. However, the Detaining Authority, while passing the impugned order of detention or while rejecting the representation, did not consider the same. This has been duly replied by the Detaining Authority in her affidavit in reply. The learned Magistrate had passed his order on 21st December, 2004 referring the detenu to the J.J.Hospital. He was ill-treated by the officers of the Sponsoring Authority and a copy of the same was also

furnished to the detenu. This indicated that the detenu had made complaints about the illtreatment given to him by the officers of the Sponsoring Authority and the learned Magistrate after having noted the injuries, referred the detenu for medical examination at J.J.Hospital. The medical certificate was forwarded in a sealed cover to the learned Magistrate and therefore, the copy of the said certificate was not made available to the Sponsoring Authority. However, from the receipt of the medical certificate, no further action was directed by the learned Magistrate and under these circumstances, it cannot be said that the detenu's statements were recorded under threats, violence or intimidation and he was prevented from withdrawing the same on justifiable grounds. The Detaining Authority could not consider the medical certificate because it remained with the Court only.

17. We are therefore, satisfied that no interference is called for in the impugned detention order and the challenge to the same raised in this Petition fails.

Hence, the Petition is dismissed.

(NARESH H.PATIL,J.) **(B.H.MARLAPALLE,J.)**